

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

Criminal File No. 16-340 (MJD/FLN)

(1) HUY NGOC NGUYEN,
(2) JEROME TARLVE DOE,
(3) NAPOLEON TUTEX DEAH,
(5) MIMI HUU DOAN, and
(6) QUINCY CHETTUPALLY,

Defendants.

David Michael Maria and John E. Kokkinen, Assistant United States Attorneys,
Counsel for Plaintiff.

Daniel M. Scott, Kelley, Wolter & Scott, P.A., Counsel for Defendant Huy Ngoc
Nguyen.

Robert W. Owens, Jr., Owens Law, L.L.C., Counsel for Defendant Jerome Tarlve
Doe.

Shannon R. Elkins, Office of the Federal Defender, Counsel for Defendant
Napoleon Tutex Deah.

William J. Mauzy and Kaitlin Ek, Mauzy Law PA, Counsel for Defendant Mimi
Huu Doan.

Ryan Patrick Garry, Ryan Garry, Attorney, LLC, Counsel for Defendant Quincy Chettupally.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel signed November 8, 2017. [Docket Nos. 195-199] Defendants Huy Ngoc Nguyen, Jerome Tarlve Doe, Mimi Huu Doan, and Quincy Chettupally filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court adopts the Report and Recommendation of United States Magistrate Judge Noel dated November 8, 2017, with the following modifications:

On pages 2 and 3 of the Report and Recommendation, the citations to 18 U.S.C. § “1342” are replaced with citations to 18 U.S.C. § “2.”

On pages 4 and 5 of the Report and Recommendation, the Court deletes the dates listed for counts 9 through 12 and replaces them with the following dates: for Count 9: “02/18/2015;” for Count 10: “05/01/2015;” for Count 11: “05/23/2016;” and for Count 12: “06/01/2016.”

On page 6 of the Report and Recommendation, the Court deletes the following sentence: “The offense of conspiracy consists of an agreement between

the conspirators to commit an offense, with at least one overt act to further the purposes of the conspiracy. See 18 U.S.C § 371; United States v. Pelton, 578 F.2d 701, 711 (8th Cir. 1978).” The Court replaces that sentence with the following: “The Superseding Indictment charges a conspiracy under 18 U.S.C. § 1349. “[A] conspiracy conviction under § 1349 does not require proof of an overt act.” United States v. Roy, 783 F.3d 418, 420 (2d Cir. 2015). See also Eighth Circuit Manual of Model Jury Instructions (Criminal) (2014) § 5.06A-1 n.2. The elements of conspiracy are “that (1) a conspiracy existed; (2) the defendant knew of it; and (3) the defendant knowingly and voluntarily joined it.” United States v. Bergman, 852 F.3d 1046, 1065 (11th Cir. 2017) (citation omitted).”

Also before the Court are Defendants Huy Ngoc Nguyen’s, Mimi Huu Doan’s, and Quincy Chettupally’s appeals of Magistrate Judge Noel’s November 16, 2017 Order denying the motions to strike surplusage, denying in part the motions for a bill of particulars, and denying the motion to sever. This Court will reverse a magistrate judge’s order on a nondispositive issue if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); D. Minn. L.R. 72.2(a). The Court has reviewed the submissions and the record in this case and concludes that Magistrate Judge Noel’s November 16, 2017 Order is neither clearly

erroneous nor contrary to law. Therefore, the November 16, 2017 Order is affirmed.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Franklin L. Noel signed November 8, 2017 [Docket Nos. 195-199] with the modifications set forth above.
2. Defendant Huy Ngoc Nguyen's Motion to Dismiss the Superseding Indictment [Docket No. 138] is **DENIED**.
3. Defendant Jerome Tarlve Doe's Motion to Dismiss the Superseding Indictment [Docket No. 141] is **DENIED**.
4. Defendant Jerome Tarlve Doe's Motion to Dismiss the Superseding Indictment for Lack of Probable Cause and Failure to State a Claim [Docket No. 143] is **DENIED**.
5. Defendant Quincy Chettupally's Motion to Dismiss the Indictment [Docket No. 166] is **DENIED**.
6. Defendant Napoleon Tutex Deah's Motion to Dismiss the Superseding Indictment [Docket No. 171] is **DENIED**.
7. Defendant Mimi Huu Doan's Motion to Dismiss the Superseding Indictment [Docket No. 172] is **DENIED**.
8. United States Magistrate Judge Franklin L. Noel's November 16, 2017 Order [Docket Nos. 201, 204, 205] is **AFFIRMED**.
9. Defendant Huy Ngoc Nguyen's objections [Docket No. 210] are **OVERRULED**.

10. Defendant Quincy Chettupally's objection [Docket No. 213] is
OVERRULED.

11. Defendant Mimi Huu Doan's objections [Docket No. 217] are
OVERRULED.

Dated: January 3, 2018

s/ Michael J. Davis

Michael J. Davis

United States District Court